

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KELVIN DANIELS, et al.
Plaintiffs,

v.

EARNEST BLAIR, et al.,
Defendants.

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Case No. 2:23-cv-3895-JDW

ORDER

AND NOW, this 27th day of March, 2024, upon consideration of Plaintiffs Kelvin Daniels and Danee Slaton's Motions to Proceed *In Forma Pauperis* (ECF Nos. 1, 9), Prisoner Trust Fund Account Statements (ECF No. 3, 8), and *pro se* Complaint (ECF No. 2), it is **ORDERED** as follows.

1. The Motions To Proceed *In Forma Pauperis* (ECF Nos. 1, 9) are **GRANTED** pursuant to 28 U.S.C. § 1915.

2. Kelvin Daniels, #QP-6416, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Superintendent of SCI Huntingdon or other appropriate official shall assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Mr. Daniels' inmate account; or (b) the average monthly balance in Mr. Daniels' inmate account for the six-month period immediately preceding the filing of this case. The Superintendent or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for

this case. In each succeeding month when the amount in Mr. Daniels' inmate trust fund account exceeds \$10.00, the Superintendent or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Mr. Daniels' inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. Danee Slaton, #PE-6752, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Superintendent of SCI Cambridge Springs or other appropriate official shall assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Ms. Slaton's inmate account; or (b) the average monthly balance in Ms. Slaton's inmate account for the six-month period immediately preceding the filing of this case. The Superintendent or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Ms. Slaton's inmate trust fund account exceeds \$10.00, the Superintendent or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Slaton's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

4. The Clerk of Court shall send a copy of this Order to the Superintendent of SCI Huntingdon and the Superintendent of SCI Cambridge Springs.

5. The Complaint is deemed filed.

6. The Clerk of the Court shall add the following Defendants to the docket in this case: C/O Hernandez; C/O Golden; Sgt. Lite; C/O Mendes; C/O Morrison; Major Brooker, and Blanche Carney.

7. For the reasons stated in the accompanying Memorandum, Mr. Daniels' and Ms. Slaton's claims are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) with the exception of their Fourteenth Amendment Excessive Force Claims and First Amendment retaliation claims against Defendants Earnest Blair, Sergeant Nunez, C/O Marlow, C/O Golden, and Sergeant Dick, as described further in the Court's accompanying Memorandum.

8. The Clerk of Court shall send Mr. Daniels and Ms. Slaton a blank copy of the Court's standard form complaint for prisoners to use to file a complaint bearing the above civil action number.

9. If Mr. Daniels and Ms. Slaton can cure the defects in their dismissed claims, they may file an Amended Complaint no later than May 3, 2024. Any amended complaint shall identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Daniels and Slaton's claims against each defendant, and shall bear the title "Amended Complaint" and the case number 23-cv-3895. If Mr. Daniels and Ms. Slaton file an amended complaint, their amended complaint must be a complete document

that includes all of the bases for their claims, including claims that I have not yet dismissed if they seek to proceed on those claims. Claims that are not included in the amended complaint will not be considered part of this case. **This means that if Mr. Daniels and Ms. Slaton file an Amended Complaint, they must reallege their excessive force and First Amendment retaliation claims with sufficient facts if they still seek to proceed on those claims.** When drafting their amended complaint, Mr. Daniels and Ms. Slaton should be mindful of my reasons for dismissing their claims as explained in the accompanying Memorandum. Upon the filing of an amended complaint, the Clerk shall not make service until I so order.

10. If Mr. Daniels and Ms. Slaton do not file an amended complaint, I will direct service of their initial Complaint on Mr. Blair, Sgt. Nunez, Ofc. Marlow, Ofc. Golden, and Sgt. Dick so that Plaintiffs may proceed only on the claims I have not dismissed. Mr. Daniels and Ms. Slaton may also notify the Court that they seek to proceed on these claims rather than file an amended complaint. If they file such a notice, Plaintiffs are reminded to include the case number for this case, 23-cv-3895.

11. The time to serve process under Federal Rule of Civil Procedure 4(m) is extended to the date the Court issues summonses in this case if summonses are issued.

BY THE COURT:

/s/ Joshua D. Wolson

JOSHUA D. WOLSON, J.